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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/667,922

09/22/2003

Robert Edward Gott

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EXAMINER

HUGHES, ALICIA R

ART UNIT

PAPER NUMBER

1614

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/667,922	Applicant(s) GOTT ET AL.	
	Examiner ALICIA R. HUGHES	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1 sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Claims

Claims 1-6 and 8-21 are currently pending and are the subject of this Office Action.

Applicant's arguments and amendments filed on 16 September 2008 have been fully considered and are not deemed to be persuasive regarding the previous rejections made of record. Rejections and objections not reiterated from previous office actions are hereby withdrawn. The following rejections are reiterated and expounded upon, and they constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Claim Rejection – 35 U.S.C. §103(a)

Claims 1-6 and 8-21 are rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 5,925,380 [hereinafter referred to as "Roulier et al"] in view of Müller et al as evidenced by U.S. Patent No. 5,382,611 [hereinafter referred to as "Steptoe, et al I"] and EPO 282451 A2 [hereinafter referred to as "Steptoe et al II"].

This Office's previous teachings of the aforementioned references, *supra*, and as well the arguments in the previous Office Actions associated with this application, are incorporated herein by reference in their entirety.

In initially considering the Applicant's response, the Office notes that the prior art rejection at issue does not treat Roulier et al, Steptoe et al II or Muller et al as anticipatory references. Rather, the rejection purports to show that when the references are taken together due to modification of the individual inventions of each, the proposed invention of record is

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obvious, pursuant to 35 U.S.C. §103(a). Applicant's response to the previous Office Action is comprised of piecemeal arguments that point out how the references, individually, fail to teach the claimed invention. As the Office does not argue that the instant invention is anticipated, these piecemeal arguments are not persuasive.

Applicant correctly notes that Ruler et al does not make explicit mention of destructure starch components or fragrance. However, Roulier et al does disclose starch materials and the modification of the same, as noted in previous Office Actions. The starch materials in Roulier et al are modified to meet the limitations of the instant claims based on the teachings in Steptoe et al and Muller et al, as noted in prior actions. Applicant also states that Roulier et al "emphasizes that extrusion be limited to temperatures below 100" (Page 7 of 12 of Applicant's Arguments, Para. 3). The Office's reading of the same is that compositions of the invention *can be* achieved at temperatures below 100 degrees, but that does not necessarily have to be so (Col. 1, lines 23-30). With regard to Applicant's argument that Roulier et al does not disclose fragrance, the same deficiency is, as previously noted, overcome by the combination of references utilized to support the instant rejection.

With regard to the Muller reference, Applicant again argues that the same focuses on pre-gelatinized starch rather than destructure starch and again argues that the fragrance is interspersed throughout the composition rather than sprayed on to it.

One of ordinary skill in the art would be motivated to combine the teachings of Roulier et al with the teachings of Müller et al, because they teach overlapping subject matter, most notably compositions that include shampoos that are comprised mainly of starch carriers that are water-dissolvable.

Applicants also argue that the references in total fail to teach a fragrance being deposited onto the starch. Müller et al also teach that the starch is a spray-dried starch that comprises largely intact starch granules agglomerated to loose aggregates taking on the form of indented spheres where the majority of the granules are whole and unbroken (Col. 24, lines 58-67 through Col. 25, lines 1-4). In assigning the references their broadest reasonable interpretation and in addition considering the make-up of the invention, that there are perfumed additives as part of the disclosed invention and the particles are dried as claimed, it would logically follow that fragrance would be interspersed with the starch and therefore, found on the starch.

Applicant argues that the large distinction that impedes the present analysis from establishing a *prima facie* case of obviousness is that the reference notes pre-gelatinized starches rather than destructurized starches. Applicant also traverses this rejection on the basis that chemically modified starches, which may be either non-gelatinized or pre-gelatinized are quite different from destructurized starch and also, that the present set of claims is focused on a solid rather than an emulsion base.

These traversals are not persuasive, however, because as noted prior, it is well-understood in the chemical art that destructurized starch is produced by heating a chemically non-modified starch material, and it is well-known in the art that cosmetic compositions may generally have a solid, emulsion, or liquid base. See Abstract of Steptoe et al I. More specifically, starches are destructurized by the heating of starched material to an elevated temperature sufficient to form a thermoplastic melt, and these temperatures are within the range of 100 to 200 degrees, preferably falling within the range of 140 to 190 degrees and most preferably falling within the range of 160 to 185 degrees. See Steptoe et al II. Applicant has

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argued that the starch in Roulier et al is necessarily extruded at temperatures below 100 degrees and as a result, one of skill in the art would not modify the teachings in Roulier et al by Steptoe et al as a result. As noted prior, the Office's reading of the same is that compositions of the invention *can be* achieved at temperatures below 100 degrees, but that does not necessarily have to be so (Col. 1, lines 23-30). As a result of this and other factors previously noted, one of ordinary skill in the art would be motivated to modify the teachings in Roulier as a result of the teachings in Steptoe et al.

Finally, as noted prior, at the time the instant invention was contemplated, it was well-known in the art that one of the problems with starch binders is that they are generally very sticky once dissolved or gelatinized in water. While this makes them generally good binding agents, it complicates the manufacturing process since sheets or articles made using large amounts of dissolved or gelatinized starch binders have a tendency to stick to the mold or sheet-forming apparatus. On the other hand, unmodified starch granules are generally insoluble in water and merely act as passive particulate fillers in wet systems unless the compositions containing starch granules are heated to above the gelation temperature of the starch, providing the requisite motivation to combine references in this case. See. U.S. Patent Application No. 5,736,209 [hereinafter referred to as "Andersen, et al"] (Col. 4, lines 44-60).

According to Applicant, the above reasoning is problematic, because Roulier et al and Muller themselves find benefit in starches other than destructured ones. As previously noted, these piecemeal arguments are unpersuasive due to the nature of the rejection being one of an obvious nature and further, the accompanying rationale again appears but as many allegations lacking factual support.

In view of the foregoing, it would have been *prima facie* obvious to one of ordinary skill in the art to make a solid cosmetic composition and/or foamed solid cosmetic composition with a zein starch base with a deposited fragrance and cosmetic agent.

Conclusion

None of the claims are currently in condition for allowance.

Applicants' amendment necessitated the new ground of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Hughes whose telephone number is 571-272-6026. The examiner can normally be reached from 9:00 AM to 5:00 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at 571-272-0718. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Public PAIR only. For information about the PAIR system, see <http://pair-direct-uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alicia R. Hughes/
Examiner, Art Unit 1614

/Raymond J Henley III/
Primary Examiner, Art Unit 1614